

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

MICHAEL E. WOLFE,) C/A No. 4:20-0244-SAL-TER
vs.)
Plaintiff,) ORDER
vs.)
Nfn. Churray,)
Officer Kayla Shervey,)
Nfn. Moccabello,)
Nfn. Caldwell, *Sgt.*)
Nfn. Perks, *Lt.*)
Nfn Lasley, *Captain*,)
Nfn Toth, *Captain*,)
Jimmy Pacheco, *licensed clinical psychiatrist*,)
Kathy Wyant, *Human Servs. Coord.*,)
Nfn Early, *Associate Warden*,)
Donna Ashley-Harouff, *nurse*,)
Amy Enloe, *field nurse practitioner*,)
Nfn Glen, *deputy warden*,)
Nfn Osborne, *registered nurse*,)
Thomas Overman, *registered nurse*,)
Dr. McRee,)
Nfn Welch, *transportation sgt.*,)
L. Harris, *registered nurse*,)
Ashley Grimsley, *registered nurse*,)
Katherine Burgess, *registered nurse*,)
James Smith, *Human Services Coordinator*)
NFN Palmer, *Captain/Unit Manager*,)
Defendants.)
Defendants.)
Defendants.)

The Plaintiff, proceeding *pro se*, brings this action pursuant to 42 U.S.C. 1983¹.

Plaintiff is currently housed at McCormick Correctional Institution. Generally, Plaintiff alleges Defendants Ashley-Harouff, Burgess, Caldwell, Churray, Earley, Enloe, Glenn-Evelyn, Harris, Lasley, Pacheco-Perez, Perks, Shervey, Smith, Toth and Wyant (hereinafter Defendants) violated his constitutional rights.

On September 10, 2020, Plaintiff filed a motion for default judgment as a sanction against these Defendants asserting that they have failed to respond to his discovery. (ECF. No. 171). Defendants filed a response in opposition asserting that they have responded to all of Plaintiff's discovery requests pursuant to the Court's Order and have obtained and redacted as instructed by the Court's order, the requested logbooks and produced same to Plaintiff on September 23, 2020. Defendants assert that they have searched documentation maintained by the South Carolina Department of Corrections and produced the same when located. If defendants found no documentation and had no memory of events alleged, they responded as such. Defendants argue that Plaintiff is not entitled to default judgment merely because they did not provide the responses with which he agrees. Defendants state that they have "responded fully as possible to each discovery request propounded by the Plaintiff and

¹All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d),DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the District Judge.

cannot produce documents that simply do not exist or induce memories where there are none." (ECF No. 180).

Plaintiff is seeking sanctions for non-compliance with the court's discovery order. Rule 37 of the Federal Rules of Civil Procedure governs sanctions for failing to make disclosures or to cooperate in discovery, including but not limited to default judgment. Plaintiff asserts that Defendants failed to abide by the court's order with regard to discovery and that the court should render a default judgment against the disobedient party. Previously, Plaintiff filed motions to compel for which the court entered orders granting in part and denying in part the motions to compel. (ECF No. 131, 157). Defendants filed a certificate of service stating that they deposited a copy of the second supplemental responses to Plaintiff's First Request for Production of Documents and supplemental response to his second set of interrogatories as ordered by the court to the Plaintiff *via* Certified Mail on August 27, 2020, and September 23, 2020. (ECF Nos. 150 and 159). Accordingly, Plaintiff's motion for default judgment as a sanction under Rule 37 of the Federal Rules of Civil Procedure (ECF No. 171) is denied.

s/Thomas E. Rogers, III

Thomas E. Rogers, III

United States Magistrate Judge

October 7, 2020
Florence, South Carolina